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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

JOHN HENRY YABLONSKY,

Plaintiff and Appellant,

v.

GEOFFREY CANTY et al.,

Defendants and Respondents.

E068775

(Super.Ct.No. CIVDS1506664)

OPINION

APPEAL from the Superior Court of San Bernardino County. Wilfred J. Schneider, Jr., Judge. Affirmed.

John Henry Yablonsky, in pro. per., for Plaintiff and Appellant.

Michelle D. Blakemore, County Counsel, Matthew J. Marnell, Deputy County Counsel for Defendants and Respondents.

Plaintiff and appellant John Henry Yablonsky was convicted of the murder of Rita Cobb and was sentenced to life without the possibility of parole. Yablonsky's conviction was affirmed on appeal by this court in our unpublished opinion (*People v. Yablonsky* (Dec. 4, 2013, E055840) [nonpub. opn.] [2013 Cal.App.Unpub. LEXIS 8800]) and

review was denied by the California Supreme Court. Yablonsky's habeas corpus petitions filed in the state courts attacking his conviction were unsuccessful and he remains incarcerated.

Yablonsky was represented at trial by the San Bernardino County Public Defender's Office; specifically, defendants and respondents Mark Shoup and Geoffrey Canty (collectively, Defendants), and David Sanders. On December 24, 2015, Yablonsky filed a first amended complaint (FAC) against Defendants; Sanders; Deputy District Attorney John Thomas; and Michael Ramos, the District Attorney for San Bernardino County, alleging negligence, professional negligence and a violation of Title 42 United States Code section 1983.¹ Initially, Sanders, Ramos and Thomas filed a demurrer to the FAC, which was granted, and Yablonsky appealed. In our previous unpublished decision *Yablonsky v. Ramos* (Mar. 16, 2018, E065773) [nonpub. opn.] [2018 Cal. App. Unpub. LEXIS 1766 (*Yablonsky I*)], we found that Ramos and Thomas were immune from prosecution pursuant to Government Code section 821.6. As for Sanders, we found Yablonsky failed to show he obtained the required postconviction relief in order to be granted relief on his professional negligence and fraud claims. We upheld the grant of the demurrer without leave to amend.

This second appeal involves the same FAC. Defendants were served at a different time than Sanders, Ramos and Thomas. Defendants filed a notice of demurrer and

¹ Yablonsky named other defendants who have not appealed or are not relevant to this appeal.

demurrer to the FAC on March 15, 2017 (Demurrer). The trial court granted the Demurrer as to Defendants on the ground that each of the causes of action alleged against them were based on malpractice and Yablonsky had failed to show that he had obtained the required postconviction relief required to bring a malpractice claim.

Yablonsky files this appeal arguing that the trial court erred by granting the Demurrer as Defendants committed fraud by refusing to turn over all of the records in their possession that would have exonerated him. Yablonsky's claims are barred by collateral estoppel.

FACTUAL AND PROCEDURAL HISTORY²

A. STATEMENT OF FACTS

In September 1985, Rita Cobb's decomposing body was found by her son in her bedroom in her Lucerne Valley home. She was nude and strangled by a hanger. No suspect was found at the time. Semen was found in her vagina. DNA tests were performed on the semen in 1999 but no match was found. In 2003, the DNA was once again tested and at some point matched to Yablonsky. In 2009, Yablonsky was interviewed. He lived in Long Beach but advised the interviewing San Bernardino County Sheriff's Detectives, Rob Alexander and Greg Myler, that in 1985, he and his wife rented a back house on Cobb's property in Lucerne Valley. When Yablonsky denied having sexual relations with Cobb, or any type of intimate relationship with her, he was arrested for her murder. (*Yablonsky I, supra*, E065773 at pp. *2-3.)

² This court provided a detailed factual and procedural history in the prior opinion. We briefly review those facts here.

B. PROCEDURAL HISTORY

1. *BACKGROUND*

Yablonsky was found guilty of first degree murder and was sentenced to life without the possibility of parole. Plaintiff's conviction was affirmed on appeal and review in the California Supreme Court was denied. His state court habeas petitions attacking his conviction were also denied. In addition, Yablonsky filed a federal civil rights complaint pursuant to Title 42 United States Code section 1983 in federal court. He filed an amended complaint and the federal court advised him that unless he could show reversal of his conviction, he was not entitled to relief. The federal court dismissed the complaint in December 2015 upon Yablonsky's request. (*Yablonsky I, supra*, E065773 at pp. *4-5.)

2. *FIRST AMENDED COMPLAINT*

On December 24, 2015, Yablonsky filed his FAC. In the first portion of the FAC, he set forth facts showing his diligence in bringing the claims. (*Yablonsky I, supra*, E065773 at pp. *6-7.) As for the facts, Yablonsky alleged that on March 8, 2009, Detective Alexander, assisted by Detective Myler, interrogated him in his home. They then transported him to the local police station where they continued their interrogation. They arrested Yablonsky. After the interrogation, the recordings were transcribed and were altered numerous times by Detective Alexander at the direction of Thomas, who was a deputy district attorney. Ramos and Sanders assisted or were aware of the alterations. Yablonsky's legal counsel—Sanders, Shoup, and Canty—hid the changes to the transcript from him. Canty, who represented him prior to Sanders, hid evidence from

Yablonsky despite Yablonsky asking for all of the discovery. Sanders, his second counsel, also hid discovery from him violating the rules of professional conduct. This included information regarding William Backhoff who Yablonsky claimed was the true killer. Sanders also withheld reports from him. Yablonsky alleged that Shoup was the supervisor of Sanders and instructed his attorneys. (*Yablonsky I, supra*, E065773 at pp. *7-8.)

Yablonsky further claimed that Sanders failed to conduct appropriate investigation into the DNA evidence; evidence of a red hair found on Cobb's body; DNA on cigarette butts in the house; and investigate further defense witnesses. Sanders rested the case without Plaintiff making a decision whether to testify. (*Yablonsky I, supra*, E065773 at p. *8.)

Yablonsky also alleged that prior to his trial, Ramos printed flyers to be distributed to residents of San Bernardino County where he was running for reelection as district attorney. The flyers depicted a photograph of Yablonsky along with the information that a suspect was arrested in the cold case involving Cobb. The flyers extolled Ramos's efforts in the cold case division and that Cobb's family would finally have closure. Sanders did not adequately address the issue prior to Yablonsky's trial. (*Yablonsky I, supra*, E065773 at p. *8.)

Yablonsky named both or one of the Defendants in the second, third, fifth, sixth and seventh causes of action in the FAC. Yablonsky's second cause of action was for negligence against Detective Myler, Detective Alexander, Thomas, Sanders, Ramos and Shoup. They violated his Fifth and Fourteenth Amendment rights against self

“compulsion,” due process and equal protection. They also violated his rights under the state Constitution. The violation was based on the presentation of the interrogation to the jury, which caused him irreparable harm. (*Yablonsky I, supra*, E065773 at pp. *8-9.)

Yablonsky’s third cause of action was for negligence and right to access to the courts. He named Sanders and Shoup. His First, Sixth and Fourteenth Amendment rights under the federal Constitution were violated and his state constitutional rights were violated. The jail officials blocked access to his attorney and other public officials. Sanders and Shoup were aware of the restrictions and did not try to remedy the situation. (*Yablonsky I, supra*, E065773 at p. *9.)

Yablonsky’s fifth cause of action was based on negligence, professional negligence and right to an impartial jury. He named Ramos, Thomas, Sanders, Shoup and Detective Alexander. He alleged violations of his Fifth, Sixth and Fourteenth Amendment rights under the federal Constitution and his state constitutional rights. He alleged that by Ramos sending out the flyers, his right to an impartial jury was violated. Sanders and Shoup violated his rights by scheduling a trial in front of a biased jury. (*Yablonsky I, supra*, E065773 at p. *10.)

Yablonsky’s sixth cause of action was for negligence, professional negligence, due process of law and equal protection. He alleged violations of the Fifth and Fourteenth Amendments of the federal and state Constitutions. He named Ramos, Thomas, Sanders, Shoup and Detective Alexander. He alleged fabrications of evidence. Yablonsky’s seventh cause of action was for negligence, professional negligence, right of access to counsel and equal protections of laws. He alleged violations of the Fifth, Sixth and

Fourteenth Amendments under the federal and state Constitutions. He named Shoup, Sanders, and Canty. This cause of action related to the failure to advise Plaintiff of all of the discovery in the case. His counsel violated rules of professional conduct and caused him irreparable harm, including his loss of rights. (*Yablonsky I, supra*, E065773 at p. *10-11.)

3. *DEMURRERS SEEKING DISMISSAL OF THE FAC*

On January 21, 2016, Ramos, Thomas and Sanders filed a demurrer to the FAC. They argued Yablonsky's claims were barred by judicial estoppel because he had pursued the same claims in federal court and had been unsuccessful. Further, the claims were uncertain. Ramos and Thomas argued they were immune from liability and Sanders argued that Yablonsky could not bring a claim of professional negligence or malpractice without first proving he had obtained postconviction relief. (*Yablonsky I, supra*, E065773 at pp. *11-12.)

On March 15, 2017, Defendants filed the Demurrer. They alleged that all of the causes of action were uncertain; to the extent Yablonsky's causes of action arose from Title 42 United States Code section 1983, they were barred based on his failure to prove he had obtained postconviction relief; his state claims of negligence were barred by the failure to obtain postconviction relief; and were barred by judicial estoppel based on him filing the same claims in the federal court. They argued that since Yablonsky had admitted to failing to obtain postconviction relief, the trial court should grant the Demurrer.

Along with the Demurrer, Defendants submitted a request for judicial notice of the filing of the civil rights complaint and amendments by Yablonsky in the federal court.

4. *TRIAL COURT RULINGS IN YABLONSKY I AND THE CURRENT CASE*

In the prior case, the trial court issued a written ruling granting the demurrer filed by Ramos, Thomas and Sanders, first finding Ramos and Thomas were immune from liability pursuant to Government Code section 821.6. It further found, “The Court SUSTAINS Mr. Sander’s [*sic*] demurrer to the FAC, without leave to amend, on the ground that each of the causes of action alleged against Mr. Sanders sounds in malpractice and plaintiff fails to show that he has obtained the required postconviction relief.” Judgment was entered dismissing the case on March 18, 2016. (*Yablonsky I*, *supra*, E065773 at pp. *11, 13.)

In the current case, the Demurrer was heard on April 27, 2017. Yablonsky argued that Defendants never denied his allegations, they only claimed that they had immunity. The matter was submitted. On that same day, the trial court issued its ruling dismissing the FAC without leave to amend. On May 30, 2017, the dismissal was filed. With the dismissal the trial court made the following findings: Yablonsky was suing Defendants for malpractice, which required he show he had been granted postconviction relief. Yablonsky had admitted he remained incarcerated. Further, to the extent Yablonsky was arguing fraud, which the trial court did not believe the FAC adequately plead, the claim was based on malpractice, which required a showing of postconviction relief. He would

be unable to amend the FAC to establish postconviction relief. The trial court denied the Demurrer on the grounds of judicial estoppel and that the FAC was uncertain.

5. *MOTION FOR RECONSIDERATION*

Prior to the dismissal, on May 10, 2017, Yablonsky filed a motion for rehearing requesting that the court reconsider its ruling. The matter was set for June 19, 2017. Before that date, on May 30, the trial court filed its dismissal. Defendants filed opposition claiming that Yablonsky's motion for rehearing was a motion for reconsideration and he had failed to meet the requirements for filing such motion. On June 18, 2017, defendant filed his notice of appeal. On June 19, 2017, the trial court denied the motion for rehearing on the grounds of both lack of jurisdiction (it had dismissed the case on May 30, 2017) and Yablonsky had not met the requirements for filing a motion for reconsideration.³

DISCUSSION

Yablonsky claims on appeal Defendants failed to turn over records to him, which would have resulted in evidence sufficient to overturn his conviction. Canty, who represented him before the case was turned over to Sanders, failed to release all of the evidence in his possession to Sanders or Yablonsky. Further, Shoup, who was the supervisor of Canty and Sanders, aided in concealing the evidence. Yablonsky insists that if the evidence withheld from him had been disclosed prior to his appeal, he would

³ Although Defendants address that the trial court properly denied the motion for rehearing filed by Yablonsky, we do not interpret Yablonsky's appellant's opening brief to raise any claim as to the denial of the motion.

have been successful in obtaining postconviction relief. He insists that Canty and Shoup participated in fraud upon the courts to get him convicted. Yablonsky admits that he has been unable to obtain postconviction relief. These claims are barred by collateral estoppel.

Yablonsky's prior appeal, based on the same FAC that involved Sanders, Ramos and Thomas, was resolved against him on March 16, 2018. We initially found that the pleading was uncertain and the demurrer was appropriately granted under Code of Civil Procedure section 430.10, subdivision (f).⁴ We also found that to the extent Yablonsky was raising civil rights claims pursuant to Title 42 United States Code section 1983, he was not entitled to relief or leave to amend. We found, "A § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such a determination, or called into question by a federal court's issuance of a writ of habeas corpus." (*Yablonsky I, supra*, E065773 at pp. *17-19.) We concluded, "Yablonsky failed to establish that his conviction had been overturned or that if he was successful his conviction would be invalidated. As such, his claims under Title 42 United States Code section 1983 were properly dismissed without leave to amend." (*Yablonsky I, supra*, E065773 at p. *20.)

In our prior opinion, we also rejected any claims based on malpractice or professional negligence as it was required under state law that he show he achieved a reversal of his conviction. (*Yablonsky I, supra*, E065773 at pp. *22-23} We held, "To

⁴ Since the trial court in this case denied the Demurrer on this ground, it is not relevant to this appeal.

the extent that Yablonsky is claiming malpractice or professional negligence on Sanders's part, he also has failed to show he achieved a reversal of his conviction as required. ‘ “ ‘Permitting a convicted criminal to pursue a legal malpractice claim without requiring proof of innocence would allow the criminal to profit by his own fraud, or to take advantage of his own wrong, or to found [a] claim upon his iniquity, or to acquire property by his own crime.’ ’ [Citation.] Further, ‘ “allowing civil recovery for convicts impermissibly shifts responsibility for the crime away from the convict.” ’ [Citation.] ‘Only an innocent person wrongly convicted due to inadequate representation has suffered a compensable injury because in that situation the nexus between the malpractice and palpable harm is sufficient to warrant a civil action, however inadequate, to redress the loss.’ [¶] Yablonsky has not shown that he obtained a reversal of his conviction. As such, he cannot show that he could allege a proper cause of action of malpractice or professional negligence against Sanders.” (*Yablonsky I, supra*, E065773 at pp. *22-23.)

“Collateral estoppel (more accurately referred to as ‘issue preclusion’) ‘prevents relitigation of previously decided issues,’ even if the second suit raises different causes of action. [Citation.] Under California law, ‘issue preclusion applies (1) after final adjudication (2) of an identical issue (3) actually litigated and necessarily decided in the first suit and (4) asserted against one who was a party in the first suit or one in privity with that party.’ ” (*Kemper v. County of San Diego* (2015) 242 Cal.App.4th 1075, 1088.) Issue preclusion prevents “relitigation of previously decided issues.” (*DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 824.) “There is a limit to the reach of issue

preclusion, however. In accordance with due process, it can be asserted only against a party to the first lawsuit, or one in privity with a party.” (*Id.* at p. 824.)

Defendants maintain that Yablonsky’s claims are barred by collateral estoppel. Here, Yablonsky is appealing the Demurrer to the same FAC wherein we already denied relief as to Sanders. There is no dispute he was a party to the previous case. Moreover, Defendants were named in the same causes of action as Sanders. The identical issues were litigated and decided in the *Yablonsky I* case. “ ‘The “identical issue” requirement addresses whether “identical factual allegations” are at stake in the two proceedings, not whether the ultimate issues or dispositions are the same.’ ” (*Hernandez v. City of Pomona* (2009) 46 Cal.4th 501, 511-512.) “[T]he fact a party asserts new legal or factual theories or new evidence relevant to an issue previously decided does not affect the applicability of the collateral estoppel bar.” (*Kemper v. County of San Diego, supra*, 242 Cal.App.4th at pp. 1090-1091.) This appeal is based on the same FAC in *Yablonsky I*. Even though the arguments made in the prior appeal were different than those raised in this case, the relevant issues have been litigated and decided against Yablonsky.

Yablonsky argues collateral estoppel does not apply because this case involves a different set of parties who committed different acts of misconduct while representing him. Shoup acted as a supervisor who instructed Canty and Sanders, and Canty only represented him until Sanders replaced him. However, the FAC contains the same alleged professional negligence and malpractice causes of action that we found in *Yablonsky I* required a showing of postconviction relief. This equally applies to Defendants despite their involvement differing from Sanders.

Yablonsky has not met his burden of showing how he could amend his FAC to allege a cognizable claim. Absent a reasonable possibility that any pleading defects can be cured by amendment, the trial court does not abuse its discretion by denying leave to amend. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967.) Yablonsky carries the burden of proving an amendment would cure any defect. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.) Yablonsky has made no argument here as to how he could amend the FAC—and he cannot, as he has not obtained postconviction relief. As such, the trial court properly granted the Demurrer without leave to amend.

DISPOSITION

The grant of the Demurrer without leave to amend is affirmed. The parties will bear their own costs on appeal.

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MILLER

Acting P. J.

We concur:

CODRINGTON

J.

SLOUGH

J.